IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 417.

A. B. T. MANUFACTURING CORPORATION,
Petitioner,

vs.

NATIONAL REJECTORS, INC.,
Respondent.

REPLY BRIEF FOR PETITIONER.

Re Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

This is petitioner's reply to respondent's brief urging that certiorari be denied.

I.

Petitioner reiterates that it is not soliciting, nor is it necessary that there be a retrial of the facts as are pertinent with respect to the important questions of first impression presented in petitioner's petition for writ of certiorari. Respondent does not contend to the contrary. Nor is it contended by respondent that such new and important questions do not arise out of and in connection with the

litigation instituted by respondent by its petition filed in the trial court below in this case to enforce the 1939 consent decree, and petitioner's answer thereto.

II.

The total absence in respondent's brief of authorities bearing on the first and second important questions (p. 11) presented by petitioner in its petition for writ of certiorari, is conclusive testimony that such questions *are of first impression;* that prior to the decision of the Court of Appeals in this case, neither this nor any other Court had passed upon such questions.

The same is equally true as to the third important question (p. 11) contained in such petition for writ of certiorari.

The several authorities referred to by respondent in its brief (p. 3) *do not deal* with that new and important question, to-wit: Where by a consent decree the parties acknowledge the validity and infringement of only an original patent, is the issue of validity and infringement of a subsequently issued reissue of such original patent, in which the specification, drawing, and claims of the original patent are reproduced, *res adjudicata* as between the parties by reason of such consent decree?

III.

The respondent has not traversed or contradicted the claim of the petitioner that the referred to questions are questions not only of first impression but of great importance, the latter because they not only affect the parties to this litigation but also affect every licensee under a patent and every party to a consent decree stating an agreement with respect to the validity and infringement of *only* an original patent, and because they are questions that will frequently arise in patent cases.

IV.

Respondent has not traversed or contradicted the affidavit of Patzer appearing in the Appendix of petitioner's brief in support of the petition for writ of certiorari, averring that petitioner is the sole competitor of respondent in the manufacture and sale of slug rejectors of the type involved in this litigation.

Respondent does not deny that the patent in suit dominates an entire industry.

While respondent refers to a petition for declaratory judgment filed by petitioner against respondent in the District Court of St. Louis, Missouri, respondent fails to inform this Court that respondent has moved to dismiss such petition for declaratory judgment for the reason, among others, as stated in such motion, that: "2. Furthermore, this court [District Court at St. Louis] in its discretion should refuse to entertain this suit [for declaratory judgment] in view of the pendency of the above-mentioned prior filed case in the Northern District of Illinois, Eastern Division, at Chicago, Illinois, entitled National Rejectors, Inc. *vs.* A. B. T. Manufacturing Corporation, No. 744."

Petitioner reiterates that the patent in suit dominates an entire industry.

V.

In neither the trial court nor the Court of Appeals below was there in issue the question whether petitioner *had abandoned* the license in suit as now claimed by respondent. Petitioner was at no time charged with the abandonment of such license. By its petition in the trial court below in this case, to enforce the 1939 consent decree (R. 140), respondent merely sought judicial sanction of respondent's cancellation of the license, not because of an alleged abandonment of such license by petitioner, but because peti-

tioner refused to pay to respondent royalties on devices which petitioner believed and claimed, more than three years prior to the filing of respondent's petition to enforce the consent decree, did not come within the scope of the license.

Conclusion.

It is respectfully submitted that the petition for writ of certiorari, for the reasons stated in such petition and in the brief in support thereof, should be granted.

Respectfully submitted,

A. B. T. Manufacturing Corporation,
Petitioner,

By.....
Clarence E. Threedy,
Its Attorney.

Chicago, Illinois.

Certification.

The undersigned, attorney for petitioner in the above-entitled cause, hereby certifies that two copies of the foregoing reply brief were served on respondent's attorneys, Loftus, Lucas & Hammand, by mailing said copies to them to their offices at 135 South LaSalle Street, Chicago 2, Illinois, on the 27th day of December, 1950, with proper postage affixed to the envelope containing said copies.

.....